

ESTTA Tracking number: **ESTTA325017**

Filing date: **01/04/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Precise Nutrition Int'l, Inc.		
Entity	Corporation	Citizenship	California
Address	P.O. Box 344 Rancho Mirage, CA 92270 UNITED STATES		

Attorney information	Jay H. Geller 12100 Wilshire BL., Suite 500 Los Angeles, CA 90025 UNITED STATES jhgeller@aol.com Phone:3109799966
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Applicant Information

Application No	77810378	Publication date	12/29/2009
Opposition Filing Date	01/04/2010	Opposition Period Ends	01/28/2010
Applicant	Innovative Formulas, LLC 3441 WATERMARKE PL Los Angeles, CA 92612 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3472341	Application Date	08/16/2006
Registration Date	07/22/2008	Foreign Priority Date	NONE
Word Mark	VITAL 4FLEX		

Design Mark	VITAL 4FLEX
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/03/01 First Use In Commerce: 2006/03/01 Dietary supplemental drinks; Dietary supplements; Preparation for the relief of pain; Vitamin supplements

U.S. Registration No.	3126993	Application Date	01/04/2006
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	VITAL 4U		
Design Mark	VITAL 4U		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/01/00 First Use In Commerce: 2001/01/00 Computerized on-line retail store services in the field of dietary and nutritonal supplements, clothing, lighters, air fresheners, room and car deodorizers, body jewelry, key rings, scales, over-the-counter stimulants and personal deodorants and antiperspirants; Electronic retailing services via computer featuring dietary and nutritonal supplements, clothing, lighters, air fresheners, room and car deodorizers, body jewelry, key rings, scales, over-the-counter stimulants and personal deodorants and antiperspirants; On-line retail store services featuring dietary and nutritonal supplements, clothing, lighters, air fresheners, room and car deodorizers, body jewelry, key rings, scales, over-the-counter stimulants and personal deodorants and antiperspirants		

U.S. Registration No.	3123737	Application Date	08/30/2005
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	VITAL 4U		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1987/11/01 First Use In Commerce: 1988/02/24 Dietary supplements; Vitamin supplements

U.S. Registration No.	1522343	Application Date	03/07/1988
Registration Date	01/31/1989	Foreign Priority Date	NONE
Word Mark	VITAL 4U		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1987/11/01 First Use In Commerce: 1988/02/24 OVER-THE-COUNTER STIMULANT PREPARATIONS		

Related Proceedings	Opposition filed 1-4-10 against SN 77793825
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Attachments	78953314#TMSN.jpeg (1 page)(bytes) 78784948#TMSN.jpeg (1 page)(bytes) 78703642#TMSN.jpeg (1 page)(bytes) VITAL4LlifedesignOPP.pdf (2 pages)(52389 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jhgeller/
Name	Jay H. Geller
Date	01/04/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Precise Nutrition Int'l, Inc.)	
)	
)	<u>NOTICE OF OPPOSITION</u>
Opposer,)	
)	
v.)	
Innovative Formulas, LLC)	
)	
Applicant.)	
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To The Commissioner of Patents and Trademarks:

Precise Nutrition Int'l, Inc., hereby opposes registration of Applicant's trademark, VITAL4LIFE and design, published in the Official Gazette of December 29, 2000. The following allegations are submitted in support of this Notice of Opposition:

1. Opposer is a California corporation, with its principal place of business in Rancho Mirage, CA.

2. Applicant, upon information and belief, is a limited liability company under the laws of California.

3. Applicant has applied for serial number 77810378 for the trademark VITAL4LIFE based upon a bona fide intent to use.

4. Opposer has at least since 1987, long prior to the date of filing of the subject application, used the trademark VITAL4U in interstate commerce in the United States with respect to goods in International Class 5, particularly over-the-counter stimulants and dietary supplements, and in International Class 35 for retail services including dietary supplements. Opposer owns US trademark registrations nos. 1522343, 3123737 and 3126993 for the trademark VITAL4. Opposer is also the owner of US trademark registration number 3472341 for the trademark VITAL4FLEX for dietary supplements.

5. Applicant's mark wholly incorporates Opposer's trademark VITAL4, and the VITAL4 portion of applicant's mark is identical in sound, spelling and appearance to Opposer's trademark.

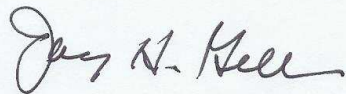
6. The goods upon which applicant intends to use its mark identical are identical to those goods upon which Opposer uses its marks VITAL4 and VITAL4FLEX.

7. The likelihood of confusion in the marketplace exists between Opposer's trademark when applied to the goods of the respective parties, and applicant's trademark.

8. Registration of applicant's trademark will result in damage to Opposer's trademark and Opposer's business.

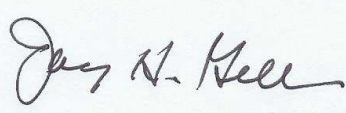
Wherefore, Opposer requests that this Opposition be sustained and that the registration to the Applicant be refused.

Dated: January 4, 2010



Jay H. Geller
Jay H. Geller, A Prof. Corp.
12100 Wilshire Bl., Suite 500
Los Angeles, CA 90025
Telephone: 310-979-9966
Facsimile: 310-943-0430
Email: JHGELLER@aol.com

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Innovative Formulas, LLC, 3441 Watermarke Place, Irvine, CA 92612 on January 4, 2010.



Jay H. Geller